

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Ronnie Edwards

Plaintiff

V.

Clark County, et al.,

Defendants

2:13-cv-01316-JAD-CWH

Order Granting Defendants' Motions for Summary Judgment and Plaintiff's Motion to Semi-Combine Exhibits and Denying Plaintiff's Motion for Leave to Amend and Motion for Leave to file a Surreply

[ECF 115, 117, 140, 145, 154]

Pro se prisoner Ronnie Edwards sues Clark County Detention Center (CCDC) correctional officers and medical care staff under 42 USC §1983 for injuries he sustained when he slipped and fell on a puddle while awaiting trial at CCDC.¹ Edwards claims that Officers Hightower and Reyes were deliberately indifferent to serious risks to his safety, and that Officers Reyes and Scott, along with Dr. Raymond Mondora and Nurse Katrina Simeon, were deliberately indifferent to his serious medical needs, all in violation of the Eighth and Fourteenth Amendments.²

Defendants move for summary judgment on all four of Edwards's claims,³ and Edwards seeks leave to file an amended complaint.⁴ Because Edwards has not shown good cause and amendment would be futile, I deny his motion for leave to amend and address defendants' summary-judgment motions. I find that Edwards lacks evidence to show that defendants were deliberately indifferent to his safety or serious medical needs, so I grant defendants' motions for summary

¹ ECF 7.

² Edwards also sued Clark County, Sheriff Gillespie, CCDC's contract medical provider Naphcare, and several John Doe defendants. I dismissed Edwards's claims against these defendants with prejudice when I screened Edwards's complaint. ECF 6 at 9.

³ ECF 115 (motion for summary judgment by Dr. Mondora and Nurse Simeon); ECF 117 (motion for summary judgment by officers Hightower, Reyes, and Scott).

⁴ ECF 145.

1 judgment, enter judgment in their favor and against Edwards, and close this case.⁵

2 **Background**

3 In May 2013, Edwards was arrested for battery constituting domestic violence and booked at
 4 the CCDC.⁶ Edwards remained there until he was sentenced to 60–150 months in prison⁷ in January
 5 2014 and transferred to the custody of the Nevada Department of Corrections.⁸ He currently resides
 6 at Nevada's High Desert State Prison.

7 **A. The June 8, 2013, incident**

8 On the evening of June 8, 2013, Edwards exited his lower-tier cell and proceeded upstairs to
 9 take a shower.⁹ Edwards reached the top of the stair case, walked about two feet, and then slipped on
 10 a puddle of water and fell to the floor.¹⁰ Edwards testified at his deposition that he believes the water
 11 forming the puddle leaked from a nearby plumbing closet,¹¹ and that he had noticed a puddle in that
 12 spot nearly every day since his arrival the previous month.¹² Edwards had reported the leak to
 13 defendants Hightower and Reyes;¹³ both officers assured him that maintenance would take care of
 14 it.¹⁴ Work orders dated June 2nd at 5:31 p.m. and June 8th at 10:45 a.m.¹⁵ show that maintenance

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 17 ⁵ I find this motion suitable for disposition without oral argument. L.R. 78-2.

18 ⁶ ECF 115-1 at 2.

19 ⁷ ECF 115-3.

20 ⁸ ECF 115-3 at 116:7–12.

21 ⁹ ECF 115-4 at 18:1–19:12, 40:4–18.

22 ¹⁰ *Id.* at 22:18–22, 28:3–1, 29:7–14.

23 ¹¹ ECF 115-4 at 30:16–22.

24 ¹² *Id.* at 32:20–23.

25 ¹³ *Id.* at 40:19–25, 41:3–7.

26 ¹⁴ *Id.* at 43:23–44:1.

27 ¹⁵ ECF 118 at 61–62.

1 personnel inspected the area but that there was no evidence of a leak.¹⁶

2 Immediately after Edwards fell, a “Code 99” was called and defendant Nurse Simeon and
3 Physician’s Assistant Henry responded.¹⁷ Edwards reported lower-back and head pain and ringing in
4 his ears; he denied losing consciousness, nausea, or vomiting.¹⁸ Nurse Simeon’s report was negative
5 for any serious injury, and she noted that there was no redness or swelling.¹⁹ P.A. Henry prescribed
6 muscle relaxers, pain killers, and a cool compress.²⁰

7 Once Edwards returned to his cell, he kited medical, complaining that he had a large bump on
8 the back of his head²¹ and that his pinky finger was swollen.²² Edwards also reported that he had just
9 vomited and that he was hearing ringing in his ears and seeing flashes of light.²³ Nurse Yadao
10 promptly responded, took Edwards’s vital signs, and notified Nurse Simeon of her findings.²⁴ Nurse
11 Simeon checked on Edwards a few hours later and observed a 3 x 3 cm swelling on the back of his
12 head.²⁵ She gave Edwards his medications and noted that he had a sick call scheduled for the
13 following day.²⁶

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16 ¹⁶ *Id.*

17 ¹⁷ ECF 115-4 at 50:6–9, 135. Nurse Simeon and P.A. Henry were both employed by Naphcare, a
18 government contractor that provides healthcare for inmates at the CCDC.

19 ¹⁸ *Id.* at 50:20–22, 135.

20 ¹⁹ *Id.* Her report also indicates that Edwards had active range of motion on all extremities, his
21 breathing was even, and that he was able to walk down the stairs without assistance.

22 ²⁰ *Id.* at 147.

23 ²¹ *Id.* at 59:10–15; ECF 115-6 at 62.

24 ²² ECF 115-6 at 62.

25 ²³ *Id.*

26 ²⁴ ECF 115-5 at 36.

27 ²⁵ ECF 115-11 at ¶ 4.

28 ²⁶ *Id.*

1 Defendant Dr. Mondora evaluated Edwards on June 10, 2013.²⁷ Edwards claims that he
 2 asked Dr. Mondora to order him moved to a bottom bunk, and that Dr. Mondora responded that he
 3 would look into it.²⁸ Edwards also claims that Dr. Mondora accused him of “faking” his injuries.²⁹
 4 Dr. Mondora denies these allegations, and his notes do not mention a bottom-bunk request.³⁰ Dr.
 5 Mondora’s physical examination was negative: he observed “no signs or physical findings of any
 6 nature to indicate any injuries to head, neck, or back,” but noted that Edwards’s right pinky was
 7 possibly strained.³¹ Dr. Mondora ordered x-rays of Edwards’s right hand and spine,³² which were
 8 taken the next day. The radiology reports indicate that Edwards had soft tissue swelling in his right
 9 hand and a muscle spasm in his back.³³

10 Edwards testified that some time between June 10–13, he spoke to Officers Reyes and Scott
 11 about moving to a lower bunk.³⁴ Both officers told him that they lacked authority to move him, and
 12 that he would need to go through the classification department for a bunk reassignment.³⁵

13 **B. The June 13, 2013, “black out”**

14 On the evening of June 13, 2013, Nurse Simeon responded to a medical call for a purported
 15 “black out.”³⁶ Edwards reported that he was brushing his teeth and, the next thing he knew, he was

17 ²⁷ Dr. Mondora is the Medical Director for Naphcare at the CCDC. ECF 115-14 at ¶ 1.
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19 ²⁸ ECF 118 at 62:5–9.

20 ²⁹ *Id.* at 61:21–25; ECF 115-6 at 67–69.

21 ³⁰ ECF 115-114 at 3, ¶ 4.

22 ³¹ ECF 115-5 at 134.

23 ³² *Id.* Edwards insisted that his head be x-rayed too; Dr. Mondora declined, stating that he did not
 24 want to expose Edwards to unnecessary radiation. ECF 115-4 at 62:13–17.

25 ³³ *Id.* at 74–75.

26 ³⁴ ECF 118 at 41, 81:2–7.

27 ³⁵ *See id.* at 42–43.

28 ³⁶ ECF 115-5 at 133–34.

1 sitting on the floor.³⁷ He also reported that he had a headache and that his ears were ringing.³⁸ Nurse
2 Simeon physically examined Edwards and reported her assessment to P.A. Henry, who examined
3 Edwards about an hour later. According to P.A. Henry's notes, Edwards told him he hit his face on
4 the sink, and that he had been suffering from episodes of vomiting, blacking out, and ringing in his
5 ears since the June 9, 2013, slip.³⁹ P.A. Henry assessed that Edwards was possibly suffering from
6 "post concussion syndrome" and recommended that he be scheduled for a follow up.⁴⁰ P.A. Henry
7 entered an order for Edwards to be transferred to a lower bunk and prescribed pain medication and
8 muscle relaxers.⁴¹

9 On the evening of June 16, 2013, Edwards kited medical, complaining that he was dizzy and
10 unable to walk.⁴² He also reported that had bruising on his right lower eyelid and a bubble on his
11 right eye.⁴³ The responding nurse noted that Edwards was alert and oriented, had a steady gait, was
12 not in any acute distress and had no bubble in his right eye despite his reports. Despite these
13 negative findings, Edwards was again referred for a sick call.⁴⁴

14 **C. The June 18, 2013, fall and first admission to University Medical Center**

15 Two days later, on June 18, 2013, Edwards submitted three grievances complaining about his
16 continuing symptoms and claiming that Dr. Mondora refused to see him at his scheduled sick call
17 appointment earlier that day.⁴⁵ Dr. Mondora maintains that he was not scheduled to see Edwards on
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19 ³⁷ *Id.*

20 ³⁸ *Id.*

21 ³⁹ *Id.* at 133.

22 ⁴⁰ *Id.*

23 ⁴¹ *Id.* at 147, 174–75.

24 ⁴² ECF 115-5 at 131–33.

25 ⁴³ *Id.* at 131.

26 ⁴⁴ *Id.* at 132.

27 ⁴⁵ ECF 115-6 at 83–87.

1 the 16th, and this is consistent with the appointment logs.⁴⁶

2 At around 11:00 p.m. that evening, Edwards was getting off his top bunk to use the restroom
 3 when he allegedly stepped onto a stool and fell to the floor.⁴⁷ Edwards testified that, when he
 4 regained consciousness, he had head, neck, and back pain.⁴⁸ A “Code 99” was called.⁴⁹ Edwards
 5 was examined at the jail and given an injection of Toradol (for nausea) and an IV of saline (for
 6 hydration).⁵⁰ Edwards was then transported to University Medical Center (UMC) for further
 7 evaluation.⁵¹

8 Edwards was admitted to UMC in the early morning hours of June 19, 2013. He received
 9 CTs of his cervical spine and brain, chest x-rays, an ultrasound of his testicles, scrotum, and carotid
 10 artery, and an echocardiogram; all tests were negative for injury.⁵² Edwards was discharged from
 11 UMC the next day, and hypertension and pain medications and muscle relaxers were
 12 recommended.⁵³ P.A. Henry prescribed—and Edwards received—these medications when he
 13 returned to the CCDC later that day,⁵⁴ and Dr. Mondora ordered Edwards a lower-bunk assignment.⁵⁵

14 **D. June 24, 2013, fall and second admission to University Medical Center**

15 On June 24th, Edwards kited medical, requesting to see a doctor and to be moved to a lower

17 ⁴⁶ Compare ECF 115-13 at 11–12 (Naphcare appointment log) and ECF 115-14 at ¶ 7 (Mondora
 18 declaration) with ECF 118 at 35–36 (Edwards deposition) and ECF 115-6 at 83–87 (grievances).

19 ⁴⁷ ECF 118 at 38, 74:1–6.

20 ⁴⁸ *Id.* at 39, 77:16–18.

21 ⁴⁹ *Id.* at 77:18–20.

22 ⁵⁰ ECF 115-6 at 88–91.

23 ⁵¹ *Id.* at 90.

25 ⁵² ECF 115-15 at 3–8.

26 ⁵³ *Id.* at 11–12.

27 ⁵⁴ ECF 115-5 at 146, 171–74.

28 ⁵⁵ ECF 115-14 at ¶ 8.

1 bunk.⁵⁶ The responding nurse submitted a transfer-request form, which noted that Edwards was to be
 2 moved to a lower bunk per Dr. Mondora's June 21, 2013, order.⁵⁷ Later that evening, a third "Code
 3 99" was called after Edwards allegedly fell while getting down off the top bunk.⁵⁸ Edwards was
 4 again transported to UMC for evaluation.⁵⁹ Though Edwards's physical examination was normal,
 5 the UMC provider placed Edwards under observation and ordered EEG and CT scans; each
 6 produced normal results.⁶⁰ Edwards was discharged from UMC two days later with a diagnosis of
 7 syncope (fainting) secondary to orthostatic (blood pressure) changes, neck strain, hypertension (high
 8 blood pressure), and tinnitus (ringing in the ear).⁶¹ Once Edwards returned to CCDC, Dr. Mondora
 9 prescribed medications for dizziness, high blood pressure, and pain and prescribed muscle relaxers.⁶²

10 **E. Edwards's claims**

11 After screening,⁶³ Edwards has four claims and seeks compensatory and punitive damages.⁶⁴
 12 In count one, Edwards alleges that Officers Hightower and Reyes were deliberately indifferent to his
 13 safety for the leaking pipe and slippery conditions it caused by the shower area. Count two is an
 14 official-capacity claim against Dr. Mondora as the director of Naphcare.⁶⁵ In counts three and four,
 15 Edwards alleges that Dr. Mondora and Nurse Simeon, along with Officers Hightower, Reyes, and
 16 Scott, were deliberately indifferent to his serious medical needs stemming from the fall. Dr.

17 _____
 18 ⁵⁶ ECF 115-7 at 22.

19 ⁵⁷ *Id.* at 23.

20 ⁵⁸ ECF 115-5 at 132.

21 ⁵⁹ *Id.*

22 ⁶⁰ ECF 115-15 at 13–19.

23 ⁶¹ *Id.* at 20.

24 ⁶² ECF 115-14 at ¶ 9.

25 ⁶³ ECF 6.

26 ⁶⁴ ECF 7 at 8, 12, 17, 24, 27.

27 ⁶⁵ *Id.* at 12.

1 Mondora and Simeon (Naphcare defendants) and Officers Hightower, Reyes, and Scott (officer
 2 defendants) move separately for summary judgment.

3 **Discussion**

4 **I. Defendants' Motions for Summary Judgment [ECF 115, 117]**

5 **A. Summary-judgment standards**

6 Summary judgment is appropriate when the pleadings and admissible evidence “show there
 7 is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of
 8 law.”⁶⁶ When considering summary judgment, the court views all facts and draws all inferences in
 9 the light most favorable to the nonmoving party.⁶⁷ If reasonable minds could differ on material facts,
 10 summary judgment is inappropriate because its purpose is to avoid unnecessary trials when the facts
 11 are undisputed, and the case must then proceed to the trier of fact.⁶⁸

12 If the moving party satisfies Rule 56 by demonstrating the absence of any genuine issue of
 13 material fact, the burden shifts to the party resisting summary judgment to “set forth specific facts
 14 showing that there is a genuine issue for trial.”⁶⁹ The nonmoving party “must do more than simply
 15 show that there is some metaphysical doubt as to the material facts”; he “must produce specific
 16 evidence, through affidavits or admissible discovery material, to show that” there is a sufficient
 17 evidentiary basis on which a reasonable fact finder could find in his favor.⁷⁰ The court only
 18 considers properly authenticated, admissible evidence in deciding a motion for summary judgment.⁷¹

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21 ⁶⁶ See *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986) (citing FED. R. CIV. P. 56(c)).

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23 ⁶⁷ *Kaiser Cement Corp. v. Fishbach & Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986).

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25 ⁶⁸ *Warren v. City of Carlsbad*, 58 F.3d 439, 441 (9th Cir. 1995); *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*, 18 F.3d 1468, 1471 (9th Cir. 1994).

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27 ⁶⁹ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986); *Celotex*, 477 U.S. at 323.

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29 ⁷⁰ *Bank of Am. v. Orr*, 285 F.3d 764, 783 (9th Cir. 2002) (internal citations omitted); *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991); *Anderson*, 477 U.S. at 248–49.

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31 ⁷¹ FED. R. CIV. P. 56(c); *Orr*, 285 F.3d at 773–74.

1 **B. Deliberate indifference to Edwards's safety**

2 Because Edwards was a pretrial detainee when the alleged deliberate indifference to his
 3 safety occurred, his claim is governed by the Fourteenth Amendment.⁷² To prevail, he must show
 4 that prison officials were deliberately indifferent to his safety by subjecting him to a substantial risk
 5 of serious harm.⁷³ Deliberate indifference requires showing that “the official[s] [knew] of and
 6 disregard[ed] an excessive risk to [that inmate’s] safety.”⁷⁴ Thus, “the official must both be aware of
 7 facts from which the inference could be drawn that a substantial risk of serious harm exists, and [the
 8 official] must also draw the inference.”⁷⁵

9
 10 **C. The officer defendants are entitled to summary judgment on Edwards’s
 11 deliberate-indifference-to-safety claim because Edwards lacks evidence to show
 12 that a dangerous condition existed and that the officers were deliberately
 13 indifferent.**

14 The officer defendants argue that Edwards lacks evidence to show that they were deliberately
 15 indifferent to his safety. Edwards responds that the officer defendants were deliberately indifferent
 16 to a serious risk to his safety because they knew about the water leak and failed to fix it or mark the
 17 area.⁷⁶

18 The leaky-pipe/slippery-floor situation that Edwards experienced simply does not qualify as a
 19 serious safety risk in the Ninth Circuit. In *Jackson v. State of Arizona*, the Ninth Circuit held that
 20 slippery prison floors “do not even state an arguable claim for cruel and unusual punishment”

21 ⁷² *Gibson v. Cty of Washoe, Nev.*, 290 F.3d 1175, 1187 (9th Cir. 2002) (explaining that pretrial
 22 detainees’ rights derive from the due-process clause rather than the Eighth Amendment’s protection
 23 against cruel and unusual punishment).

24 ⁷³ *Farmer v. Brennan*, 511 U.S. 825, 833 (1994); *Redman v. Cty of San Diego*, 942 F.2d 1435, 1441
 25 (9th Cir. 1991) (explaining that, because pretrial detainees’ rights under the Fourteenth Amendment
 26 are comparable to prisoners’ rights under the Eighth Amendment, courts apply the same standard).

27 ⁷⁴ *Id.* at 837.

28 ⁷⁵ *Id.*

29 ⁷⁶ ECF 142 at 6.

1 because the Constitution does not mandate comfortable prisons.⁷⁷ In *LeMaire v. Maass*, the Ninth
2 Circuit applied *Jackson* and held that even “shackling a dangerous inmate in a shower” does not
3 create a “sufficiently unsafe condition[,] even if the floors to the shower are slippery and [he] might
4 fall while showering. . . .”⁷⁸

5 The Ninth Circuit further fleshed out the law in this area when it held in *Frost v. Agnos* that
6 an inmate in a long-leg cast who was required to use crutches had at least stated a claim for
7 deliberate indifference when prison officials refused to provide him with an accessible shower,
8 despite his repeated requests and the officers' knowledge that he had already fallen and injured
9 himself several times.⁷⁹ The court reasoned that "Frost's repeated injuries and the unsafe conditions
10 that follow from the use of crutches," distinguished his case from the slippery floors in *LeMaire* and
11 *Jackson*.⁸⁰

12 These cases suggest that a constitutional claim may lie when an otherwise relatively minor
13 safety hazard is exacerbated by other conditions, and those conditions combine to pose a sufficiently
14 serious risk of harm to the inmate’s safety.⁸¹ But unlike Frost, Edwards has not alleged that another
15 condition exacerbated the hazard of the slippery floor or hampered his ability to reduce the risk of
16 injury should he fall. And, though Edwards allegedly reported the puddle to the officers, there is no
17 evidence that—like Frost—Edwards had previously fallen and injured himself. In fact, Edwards was
18 apparently aware of the puddle problem for several weeks before he fell and had safely negotiated

⁷⁷ *Jackson v. State of Ariz.*, 885 F.2d 639, 641 (9th Cir. 1989), superseded by statute on other grounds as stated in *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (internal citation omitted).

⁷⁸ *LeMaire v. Maass*, 12 F.3d 1444, 1457 (9th Cir. 1993).

⁷⁹ *Frost v. Agnos*, 152 F.3d 1124, 1129 (9th Cir. 1989).

24 || 80 *Id.*

²⁵ See e.g. *Hoptowit v. Spellman*, 753 F.2d 779, 784 (9th Cir. 1985) (holding that safety hazard posed by malfunctioning oven door, exacerbated by the prison's inadequate lighting, seriously threatened inmate safety); *Frost*, 152 F.3d at 1129; *Anderson v. Towne*, Case No. CV 08-2480 CTB, 2010 WL 455387, at * 4 (E.D. Cal. Jan. 29, 2010) (finding that prisoner stated a claim for deliberate indifference where dangerousness of broken tile floors was exacerbated by prisoner's limited mobility and weakness in his hands).

1 this hazard on numerous occasions, making it less likely that the puddle posed a serious danger to
 2 him.⁸² Edwards's claim that the puddle by the showers—by itself—constituted a sufficiently unsafe
 3 condition to warrant constitutional relief thus fails as a matter of law, and the officer defendants are
 4 entitled to summary judgment on claim one.

5 **D. Deliberate indifference to Edwards's serious medical needs**

6 Like safety-based deliberate-indifference claims, deliberate-indifference-to-serious-medical-
 7 needs claims brought by pretrial detainees are governed by the due-process clause of the Fourteenth
 8 Amendment.⁸³ To prevail, Edwards must show that defendants acted with “deliberate indifference”
 9 to his serious medical needs⁸⁴ by satisfying “both an objective standard—that the deprivation was
 10 serious enough to constitute cruel and unusual punishment—and a subjective standard—deliberate
 11 indifference.”⁸⁵

12 To satisfy the first prong, Edwards “must show a serious medical need by demonstrating that
 13 failure to treat his condition could result in further significant injury or the unnecessary and wanton
 14 infliction of pain.”⁸⁶ To satisfy the deliberate[-]indifference prong, Edwards must show “(a) a
 15 purposeful act or failure to respond to his pain or possible medical need and (b) harm caused by the
 16 indifference.”⁸⁷ “Indifference may appear when prison officials deny, delay[,] or intentionally
 17 interfere with medical treatment, or it may be shown by the way in which prison physicians provide

19
 20 ⁸² See *Reynolds v. Powell*, 370 F.3d 1028, 1031–32 (10th Cir. 2004) (distinguishing *Frost* and
 21 rejecting unsafe-conditions claim brought by prisoner on crutches where the evidence showed that
 22 the prisoner was aware of the standing-water problem for seven weeks before he fell and that he had
 23 safely entered and exited the shower area on crutches on numerous occasions before his fall).

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 25 ⁸³ *Gibson*, 290 F.3d at 1187.

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 27 ⁸⁴ *Farmer v. Brennan*, 511 U.S. 825, 828 (1994); *Gibson*, 290 F.3d at 1187 (applying Eighth
 28 Amendment deliberate-indifference standard to medical-needs claim brought by pretrial detainee
 under the Fourteenth Amendment).

⁸⁵ *Snow v. McDaniel*, 681 F.3d 978, 985 (9th Cir. 2012).

⁸⁶ *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (internal quotations omitted).

⁸⁷ *Id.* (internal quotations omitted).

1 medical care.”⁸⁸

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3 **E. The officer defendants are entitled to summary judgment on Edwards’s medical-
needs claims (claims three and four).**

4 The officer defendants argue that they are entitled to summary judgment on Edwards’s
5 medical-needs claims because (1) they were entitled to reasonably rely on prison medical staff to
6 provide appropriate medical care and (2) informing Edwards that they did not have authority to move
7 him to a different bunk does not constitute cruel and unusual punishment or deliberate indifference.⁸⁹
8 Edwards responds that the officer defendants were deliberately indifferent to his serious medical
9 needs because they failed to reassign him to a lower bunk and failed to take “reasonable measures to
10 abate his pain.”⁹⁰

11 The officer defendants are correct that, as correctional officers, they are entitled to reasonably
12 rely on the expertise of the prison’s medical staff.⁹¹ The officers thus had no obligation to provide
13 Edwards with any further medical treatment, or to themselves request that he be moved to a lower
14 bunk based on his medical needs. In short, the officers cannot be liable for failing to affirmatively
15 treat Edwards because he was already being treated by prison medical staff. There is also no
16 evidence that the officers denied, delayed, or intentionally interfered with Edwards’s medical
17 treatment, so they cannot be held liable on that basis.

18 Failing to reassign Edwards to a lower bunk also does not give rise to liability for cruel and
19 unusual punishment because there is no evidence that the officers were aware of—and
20 disregarded—a serious risk of harm to Edwards. Edwards’s unsubstantiated requests to Officers
21 Reyes and Scott in the days following his first fall came *before* Edwards’s two alleged falls from the

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24 ⁸⁸ *Id.* (internal quotations omitted).

25 ⁸⁹ ECF 117 at 10.

26 ⁹⁰ ECF 142 at 11, 25.

27 ⁹¹ *Lemire v. Cal. Dept. of Corr. and Rehab.*, 726 F.3d 1062, 1084 (9th Cir. 2013) (*citing Johnson v. Doughty*, 433 F.3d 1001, 1010–11 (7th Cir. 2006)).

1 top bunk.⁹² Thus, even if the top bunk did increase Edwards's risk of falling (which is disputed)
 2 there is no evidence that these officers consciously disregarded that risk.

3 Because Officers Hightower, Reyes, and Scott were entitled to reasonably rely on the
 4 CCDC's medical staff, and Edwards lacks evidence to show that the officers delayed or otherwise
 5 intentionally interfered with his treatment, the officer defendants are entitled to summary judgment
 6 on Edwards's deliberate-indifference-to-serious-medical-needs claims (claims three and four).

7 **F. The Naphcare defendants are also entitled to summary judgment on Edwards's
 8 medical-needs claims (claims two–four).**

9 Nurse Simeon and Dr. Mondora also move for summary judgment, arguing that Edwards
 10 lacks evidence to show that he had a serious medical need giving rise to constitutional protection,
 11 and that, even if Edwards could show a serious medical need, he lacks evidence to show that they
 12 were deliberately indifferent to it.⁹³

13 Edwards responds that whether he had a serious medical need and whether defendants were
 14 deliberately indifferent is genuinely disputed. He contends that his numerous medical kites and
 15 complaints and his medical records show that he had a serious medical need.⁹⁴

16 When a prisoner bases his deliberate-indifference claim on the failure to provide medical
 17 treatment, he must also show that defendants "were (a) subjectively aware of the serious medical
 18 need and (b) failed to adequately respond."⁹⁵ Indifference to a prisoner's medical needs must be
 19 substantial; mere indifference, negligence, medical malpractice, or even gross negligence are
 20 insufficient to establish deliberate indifference.⁹⁶ A mere difference of medical opinion likewise

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 22 ⁹² ECF 118 at 41, 81:2–7 (Edwards testifying that he asked Officers Reyes and Scott to move him to
 23 a lower bunk some time between June 10th and 13th).

24 ⁹³ ECF 115 at 18–20.

25 ⁹⁴ ECF 141 at 21.

26 ⁹⁵ *Conn v. City of Reno*, 591 F.3d 1081, 1095 (9th Cir. 2009) (vacated and remanded on other
 27 grounds by 131 S.Ct. 1812).

28 ⁹⁶ *Id.* at 1081–82 (internal citations and quotations omitted).

1 does not suffice;⁹⁷ a prisoner must instead show that the course of treatment chosen was medically
 2 unacceptable under the circumstances and taken in conscious disregard to his health.⁹⁸

3 The record shows that Dr. Mondora and Nurse Simeon were consistently responsive to
 4 Edwards's medical needs. Both Dr. Mondora and Nurse Simeon's examinations of Edwards—as
 5 well as tests performed by other medical providers both at the jail and the hospital—consistently
 6 returned negative results.⁹⁹ The only conditions discovered during the extensive testing that Edwards
 7 received was soft-tissue swelling in his right hand,¹⁰⁰ muscle spasm,¹⁰¹ and high blood pressure,¹⁰²
 8 and Edwards was consistently prescribed—and received—treatment for these ailments, including
 9 muscle relaxers and pain, anti-nausea, and high-blood-pressure medication.¹⁰³ There is no evidence
 10 that these defendants were subjectively aware of any serious medical need and failed to adequately
 11 respond. Edwards also has produced no evidence to show that the treatment he received was
 12 medically unacceptable under the circumstances, or that it was taken in conscious disregard for his
 13 health. Deliberate indifference is a high standard; Edwards's assertions amount to, at most, state-law
 14 negligence claims, which are not actionable under § 1983. Nurse Simeon and Dr. Mondora are
 15 entitled to summary judgment on Edwards's medical-needs claims (claims three and four).

16 Finally, Edwards's official-capacity claim against Dr. Mondora as the head of Naphcare fails
 17 as a matter of law because Edwards has not shown any underlying constitutional deprivation, let
 18 alone that any deprivation was attributable to Dr. Mondora. Accordingly, Dr. Mondora is entitled to
 19 summary judgment on claim two.

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 21 ⁹⁷ See *Franklin v. State of Or., State Welfare Div.*, 662 F.2d 1337, 1344 (9th Cir. 1981).

22
 23 ⁹⁸ See *Toguchi v. Chung*, 391 F.3d 1051, 1058 (9th Cir. 2004).

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 25 ⁹⁹ ECF 115-5 at 134; ECF 115-15 at 3–8, 13–19.

¹⁰⁰ ECF 115-5 at 74–75.

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 27 ¹⁰¹ *Id.*

¹⁰² ECF 115-15 at 3–8.

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 29 ¹⁰³ ECF 115-5 at 146, 171–74; ECF 115-14 at ¶ 9; ECF 115-6 at 88–91.

1 **II. Remaining Motions**2 **A. Edwards's motion for leave to amend is denied because amendment would be**
3 **futile.**

4 Almost three months after defendants filed their motions for summary judgment and one
5 month after I denied his previous motion to amend,¹⁰⁴ Edwards filed his fourth motion for leave to
6 amend his complaint.¹⁰⁵ Edwards seeks to replace some of the defendants previously identified as
7 John Doe defendants with their real names. Edwards seeks to add Officer Mitchell, who was
8 allegedly the officer who called the "Code 99" after Edwards's June 8, 2013, fall,¹⁰⁶ CCDC
9 maintenance worker Douglass Budd, and Sergeant Robert Burleson.¹⁰⁷ Edwards also seeks to add
10 Melody Molarino, the Health Services Administrator of CCDC,¹⁰⁸ and the Las Vegas Metropolitan
11 Police Department (LVMPD)¹⁰⁹ in their individual and official capacities.

12 Edwards's motion for leave to amend is denied for two reasons. First, Edwards's request is
13 six months late. The deadline to seek amendment was March 30, 2015.¹¹⁰ Although the liberal
14 amendment standard of Rule 15 applies to timely motions to amend, when a party seeks leave to
15 amend after the deadline for amendment has expired, he must also show good cause to reopen and
16 extend the deadline.¹¹¹ Edwards has not shown good cause to extend the deadline for amendment. I
17 denied Edwards's third motion for leave to amend because his proposed amended complaint
18 contained claims and parties that had already been dismissed with prejudice, and because Edwards
19

20 ¹⁰⁴ ECF 136.

21 ¹⁰⁵ ECF 145.

22 ¹⁰⁶ *Id.* at 6.

23 ¹⁰⁷ *Id.* at 7.

24 ¹⁰⁸ *Id.*

25 ¹⁰⁹ *Id.* at 17.

26 ¹¹⁰ ECF 96 at 2.

27 ¹¹¹ *See* ECF 136 at 3, n. 17.

1 failed to show good cause for seeking amendment after the deadline.¹¹² I instructed Edwards that, if
 2 he filed another motion to amend, he would need to show that he was diligent in seeking amendment
 3 after the deadline.¹¹³

4 Even accepting Edwards's assertions that he did not learn the identities of these defendants
 5 until March or April 2015 and taking into account that his third motion to amend was pending until
 6 August 2015, I find that Edwards has not shown good cause. Edwards does not even attempt to
 7 explain why he waited 39 days after I denied his third motion for leave to amend to file the instant
 8 motion, and allowing amendment at this late stage in the litigation would unfairly prejudice the
 9 defendants because these events occurred nearly three years ago.

10 Second, even if Edwards had demonstrated good cause, his request would be denied because
 11 his proposed amendments would be futile. Edwards's proposed amended complaint contains
 12 Nevada statutory and negligence claims that are not actionable under § 1983. Edwards's claims
 13 against the LVMPD fail because Edwards has not sufficiently alleged facts to state a plausible
 14 municipal-liability claim.¹¹⁴ Edwards's claims against Melody Molarino likewise fail because he has
 15 not alleged facts to state a plausible claim for supervisory liability.¹¹⁵ Edwards's claims against
 16 maintenance worker Douglass Budd fail because the leaky-pipe situation is not sufficiently
 17 dangerous to support a deliberate-indifference-to-safety claim. And Edwards has not pleaded any
 18 facts to show that Officer Mitchell or Sergeant Robert Burleson were deliberately indifferent to his
 19 safety or serious medical needs; so these claims also fail.

20 Because Edwards has not demonstrated good cause for seeking leave to amend past the
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22 ¹¹² ECF 136 at 2.

23 ¹¹³ *Id.* at 3.

24 ¹¹⁴ *See City of Canton v. Harris*, 489 U.S. 378, 385 (1989) (holding that a municipal entity can only
 25 be found liable under § 1983 when its policy, practice, or custom inflicts the constitutional injury).

26 ¹¹⁵ *See Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989) (holding that there is no respondeat
 27 superior liability for § 1983 actions; a supervisor is liable for the constitutional violations of her
 28 subordinates only if she participated in or directed the violations or knew of them and failed to act to prevent them).

1 deadline and because his proposed amendments are futile, his fourth motion for leave to file an
 2 amended complaint is denied.

3

4

**B. Motion for leave to file surreply/motion to strike and motion to “semi-combine
 5 exhibits” [ECF 140, 154]**

6 Edwards moves to strike defendants’ replies in support of their motions for summary
 7 judgment, arguing that they are untimely.¹¹⁶ Edwards is incorrect. Defendants’ replies were due on
 8 October 11, 2015, a Sunday. Monday October 12, 2015, was Columbus Day, a court holiday.
 9 Federal Rule of Civil Procedure 6(a)(1)(C) states that when a deadline falls on a weekend, the
 10 deadline moves to “the next day that is not a Saturday, Sunday, or legal holiday.” Defendants thus
 11 timely filed their replies on October 13, 2015, so Edwards’s motion to strike them is denied.

12 Edwards also moves for leave to file a surreply. He conclusorily argues that defendants
 13 raised new arguments in their replies, but he does not identify what these new arguments are or on
 14 what pages they can be found.¹¹⁷ Because Edwards has not identified any new arguments raised by
 15 defendants in their replies that would justify granting leave to file a surreply—and because I have
 16 discovered none—his request is denied.

17 Finally, Edwards filed a motion to “semi-combine exhibits,” requesting that I consider the
 18 exhibits attached to his opposition¹¹⁸ to the Naphcare defendants’ motion for summary judgment in
 19 support of both oppositions.¹¹⁹ Edwards’s request is granted, and I fully considered his exhibits in
 20 support of both oppositions.

21

Conclusion

22 Accordingly, with good cause appearing and no reason to delay, IT IS HEREBY ORDERED,
 23 ADJUDGED, and DECREED that defendants’ motions for summary judgment [ECF 115, 117] are

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¹¹⁶ ECF 154 at 2.

¹¹⁷ *Id.*

¹¹⁸ ECF 115.

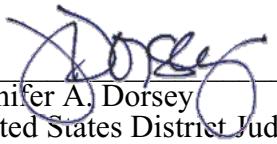
¹¹⁹ ECF 140.

1 **GRANTED. Summary judgment is granted in favor of the defendants and against the plaintiff**
2 **on all claims.**

3 IT IS FURTHER ORDERED that plaintiff's motion to semi-combine exhibits [ECF 140] is
4 **GRANTED;** and plaintiff's motion for leave to file an amended complaint [ECF 145] and motion
5 for leave to file a surreply/motion to strike [ECF 154] are **DENIED.**

6 The Clerk of the Court is instructed to enter judgment for defendants and against plaintiff and
7 **CLOSE THIS CASE.**

8 Dated this 2nd day of March, 2016.

9 
10 Jennifer A. Dorsey
11 United States District Judge

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